

Article 01. CIGARETTE TAX ACT

Sec. 43.50.010. License.

(a) A person may not sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license.

(b) The department, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The department shall adopt reasonable regulations that it considers necessary in respect to the application for and the issuance of licenses.

(c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has wilfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(d) A license required by AS 43.50.010 - 43.50.180 is in addition to any other license required by law.

(e) A license issued under AS 43.50.010 - 43.50.180 must include

- (1) the name and address of the licensee;
- (2) the type of business to be conducted; and
- (3) the year for which the license is issued.

Sec. 43.50.020. Separate licenses.

If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business for the purpose of a license under AS 43.50.010 - 43.50.180. A person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer may not operate in another capacity unless the appropriate license for it is first secured. Each license shall be exhibited at the place of business for which it is issued and in the manner prescribed by the department.

Sec. 43.50.030. License fees.

- (a) For each license issued to a manufacturer, and for each renewal, the fee is \$50.

(b) For each license issued to a distributor or wholesaler-distributor, and for each renewal, the fee is \$50.

(c) For each license issued to a vending machine operator, and for each renewal, the fee is \$50.

(d) For each license issued to a direct-buying retailer, and for each renewal, the fee is \$50.

(e) For each license issued to a buyer, and for each renewal, the fee is \$25.

(f) A license may not be issued except upon the payment of the fee notwithstanding a statute or exemption to the contrary.

#### Sec. 43.50.035. Wholesaler-distributor license.

(a) A person outside of this state who sells or distributes cigarettes into this state and is not required to be licensed under AS 43.50.010 may apply for a wholesaler-distributor license.

(b) A person outside of this state who sells or distributes cigarettes into this state, who is not required to be licensed under AS 43.50.010, and who wishes to purchase stamps under this chapter is required to be licensed as a wholesaler-distributor.

(c) The department shall adopt reasonable regulations necessary for the collection of cigarette taxes on cigarette sales or distributions made by a wholesaler-distributor licensee into this state and standards for

(1) application and issuance of the license; and

(2) refusal to issue the license.

#### Sec. 43.50.040. Expiration of licenses.

A license issued under AS 43.50.010 or 43.50.035 expires on June 30 following the date of issue. If a license is revoked, or the business for which the license is issued changes ownership or the licensee changes the place of business from the premises covered by the license, the licensee shall immediately return the license to the department. If the licensee moves the business to another location in the state, the license shall, upon the payment of a fee of 50 cents, be reissued for the new location for the balance of the unexpired term. Before a license issued under AS 43.50.010 or 43.50.035 expires, the licensee may apply to renew the license for one year from the expiration date of the license. The renewal fee required by AS 43.50.030 must accompany the application. The department shall adopt reasonable regulations that it considers necessary regarding the renewal of licenses.

#### Sec. 43.50.050. Transfer of licenses.

A license is not assignable or transferable. However in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee.

Sec. 43.50.060. Refunds.

The department may not refund the license fee upon the surrender or revocation of a license. The department may refund a license fee that is paid or collected in error. If a license is lost, destroyed, or defaced, the department may issue a duplicate license upon payment of a fee of 50 cents.

Sec. 43.50.070. Suspension or revocation of or refusal to renew a license.

(a) The department may suspend, revoke, or refuse to renew a license issued under this chapter (1) for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of this chapter or a regulation of the department adopted under this chapter; (2) if a licensee ceases to act in the capacity for which the license was issued; or (3) if a licensee negligently sells tobacco or products containing tobacco to a person who is required to, but does not, hold a license endorsement under [AS 43.70.075](#) or whose license endorsement under [AS 43.70.075](#) has been suspended. A person whose license is suspended or revoked may not sell cigarettes or tobacco products, or permit cigarettes or tobacco products to be sold, during the period of the suspension or revocation on the premises occupied or controlled by that person. A disciplinary proceeding or action is not barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under this chapter. The department shall comply with the provisions of AS 44.62 (Administrative Procedure Act), except that a hearing officer of the department, rather than a hearing officer assigned under [AS 44.62.350](#), may conduct hearings.

(b) In this section, "licensee" means a person licensed under AS 43.50.010 - 43.50.180 or 43.50.300 - 43.50.390.

*Sec. 43.50.080. Returns. [Repealed, Sec. 20 ch 109 SLA 2003].*

Repealed or Renumbered

Sec. 43.50.090. Tax imposed.

(a) There is levied an excise tax of 38 mills on each cigarette imported or acquired in the state. The tax shall be paid through the use of stamps as provided in [AS 43.50.500](#) - 43.50.700. A person who imports or acquires cigarettes in the state upon which a stamp required by this chapter has not been affixed in accordance with [AS 43.50.500](#) - 43.50.700, who fails to apply to purchase stamps as required by AS 43.50.540(a), and who fails to pay the tax through the use of stamps is not relieved of the obligation to pay taxes due under this chapter. The person shall still pay the tax, and the tax is due on or before the end of the month following the month in which cigarettes were manufactured,

imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed are not again subject to the excise when acquired by another person.

(b) It is the intent and purpose of this section to provide for the collection of this excise from the person who first acquires the cigarettes in this state.

(c) The tax imposed under (a) of this section does not apply to cigarettes imported or acquired in the state by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101.

(d) The tax imposed under (a) of this section does not apply to the first 400 cigarettes personally transported into the state by an individual for that individual's personal consumption during the calendar month.

Sec. 43.50.100. Unlicensed possession or sale.

(a) *[Repealed, Sec. 45 ch 113 SLA 1980].*

(b) *[Repealed, Sec. 3 ch 166 SLA 1976].*

(c) *[Repealed, Sec. 45 ch 113 SLA 1980].*

(d) A person or licensee who is in control or possession of cigarettes contrary to this chapter or who offers to sell or dispose of cigarettes to others for the purpose of resale without being licensed to do so is considered to have possession of the cigarettes as a consumer and is personally liable for the cigarette taxes imposed by this chapter, plus a penalty of 100 percent.

(e) *[Repealed, Sec. 45 ch 113 SLA 1980].*

Sec. 43.50.105. Restrictions on shipping or transporting cigarettes.

(a) A person who is not licensed under this chapter may not ship or cause to be shipped cigarettes to a person in this state unless the person receiving the cigarettes is

(1) licensed under this chapter;

(2) an operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555; or

(3) an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter.

(b) A person who is licensed under this chapter may not ship or cause to be shipped cigarettes to a person in this state unless the person receiving the cigarettes

(1) is licensed under this chapter;

(2) holds a tobacco endorsement under AS 43.70.075;

(3) is an operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;

(4) is an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter; or

(5) is an individual 19 years of age or older receiving the cigarettes for personal consumption and the tax imposed on the cigarettes under this chapter has been paid.

(c) A common or contract carrier may not knowingly transport cigarettes to a person in this state unless the person

(1) shipping the cigarettes is licensed under this chapter and, before shipment, provides the common or contract carrier with a copy of the person's current license issued by the department and an affidavit from the intended recipient certifying that the person receiving the cigarettes is a person described under (b)(1) - (5) of this section; or

(2) receiving the cigarettes is a person described under (a)(2) or (3) of this section or is licensed under this chapter and, before receipt, provides the common or contract carrier with a copy of the person's current license issued by the department.

(d) If the cigarettes are transported by a common or contract carrier to a home or residence, it is rebuttably presumed that the common or contract carrier knew that the person receiving the cigarettes was not a person described under (b)(1) - (5) of this section, unless the person shipping the cigarettes has satisfied the requirements in (c)(1) of this section.

(e) A person, other than a common or contract carrier, may not knowingly transport cigarettes to a person in this state, unless the person receiving the cigarettes is a person described under (b)(1) - (5) of this section.

(f) A person who ships or causes to be shipped cigarettes to a person in this state shall plainly and visibly mark the container or wrapping with the word "cigarettes" if the cigarettes are shipped in a container or wrapping other than the cigarette manufacturer's original container or wrapping.

(g) A person who violates the provisions of this section is guilty of a

(1) class A misdemeanor if the person unlawfully ships, causes to be shipped, or transports at least one but fewer than 5,000 cigarettes;

(2) class C felony if the person unlawfully ships, causes to be shipped, or transports 5,000 or more cigarettes.

(h) In addition to the criminal penalty under (g) of this section, the department may assess a civil fine of not more than \$5,000 for each violation of this section.

(i) A person who violates the provisions of this section is jointly and severally liable for the taxes imposed by [AS 43.50.090](#) and 43.50.190. To the fullest extent permitted by the Constitution of the United States, a person who violates the provisions of this section is required to collect the taxes and pay them to the department.

*Sec. 43.50.110. Taxpayer's remedies. [Repealed, Sec. 3 ch 166 SLA 1976. For current law, see [AS 43.05.240](#)].*

Repealed or Renumbered

*Sec. 43.50.120. Lien. [Repealed, Sec. 4 ch 94 SLA 1976. For current law, see [AS 43.10.035](#)].*

Repealed or Renumbered

Sec. 43.50.130. Records.

(a) A licensee shall keep a complete and accurate record of all cigarettes manufactured, purchased, or acquired. The records, except in the case of a manufacturer, must include a written statement containing the name and address of the seller and the purchaser, the date of delivery, the quantity of cigarettes, the trade name and brand, and the price paid for each brand of cigarettes purchased. The licensee shall keep such other records as the department prescribes. All statements and records required by this section shall be in the form prescribed by the department, shall be preserved for three years, and shall be offered for inspection upon demand by the department.

(b) A licensee may not issue or accept a written statement that falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale.

(c) Where an invoice is given or accepted by a licensee

(1) a statement that makes the invoice a false record of the transaction may not be inserted in the invoice; and

(2) a statement that should be included in the invoice may not be omitted from the invoice if the invoice does not reflect the transaction involved without the statement.

(d) An invoice for the sale of cigarettes given or accepted by a licensee under this chapter must state whether the taxes imposed by this chapter have been paid.

Sec. 43.50.140. Disposition of proceeds.

The proceeds derived from the payment of taxes, fees, and penalties under [AS 43.50.010](#) - 43.50.180, and the license fees received by the department shall be paid into a state fund entitled "School Fund," and shall be used exclusively to rehabilitate, construct, and repair the state's school facilities, and for costs of insurance on buildings comprising school facilities during the rehabilitation, construction, and repair, and for the life of the buildings.

*Sec. 43.50.145. Notification of noncompliance; confiscation of noncomplying cigarettes. [Repealed, Sec. 4 ch 103 SLA 2003].*

Repealed or Renumbered

Sec. 43.50.150. Administration.

(a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

*Sec. 43.50.160. Criminal penalties. [Repealed, Sec. 46 ch 113 SLA 1980. For current law, see [AS 43.05.290](#)].*

Repealed or Renumbered

Sec. 43.50.170. Definitions.

In [AS 43.50.010](#) - 43.50.190, unless the context otherwise requires,

(1) "buyer" means a person who imports or acquires cigarettes for the person's own consumption from any source other than a manufacturer, distributor, direct-buying retailer, retailer, or wholesaler-distributor;

(2) "cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco;

(3) "direct-buying retailer" means a person who is engaged in the sale of cigarettes at retail in this state and who brings cigarettes or causes cigarettes to be brought into the state that are not purchased from a wholesaler-distributor;

(4) "distributor" means a person who brings cigarettes that are not purchased from a wholesaler-distributor, or has cigarettes that are not purchased from a wholesaler-distributor brought, into the state, and who sells or distributes at least 75 percent of the cigarettes to others for resale in the state;

(5) "licensee" means a person licensed under [AS 43.50.010](#) - 43.50.180;

(6) "manufacturer" means a person who makes, fashions, or produces cigarettes for sale to distributors or other persons;

(7) "person" includes an individual, company, partnership, limited liability partnership, joint venture, joint agreement, limited liability company, association, mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

(8) "place of business" means a place where cigarettes are sold, or where cigarettes are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train;

(9) "retailer" means a person in the state who is engaged in the business of selling cigarettes at retail;

(10) "sale" includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property;

(11) "tobacco product" has the meaning given in AS 43.50.390;

(12) "wholesaler-distributor" means a person outside this state who sells or distributes cigarettes into this state, who is not required to be licensed under [AS 43.50.010](#), and who is licensed under [AS 43.50.035](#).

Sec. 43.50.180. Short title.

[AS 43.50.010](#) - 43.50.180 may be cited as the Cigarette Tax Act.

## Article 02. ADDITIONAL CIGARETTE TAXES

Sec. 43.50.190. Additional tax levy on cigarettes.

(a) There is levied an excise tax on each cigarette imported or acquired in this state,

(1) after December 31, 2004, but before July 1, 2006, 42 mills;



(2) after June 30, 2006, but before July 1, 2007, 52 mills;

(3) after June 30, 2007, 62 mills.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 and this chapter apply to the tax levied in this section.

(c) The tax imposed under (a) of this section does not apply to the first 400 cigarettes personally transported into the state by an individual for that individual's personal consumption during the calendar month.

(d) A portion of the annual proceeds of the tax levied under (a) of this section equal to 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco use education and cessation fund established in AS 37.05.580. This deposit shall be in addition to any sums deposited into the fund under AS 37.05.580 (a).

#### Sec. 43.50.200. Nonparticipating manufacturer equity excise tax.

(a) There is levied an excise tax of 12.5 mills on each cigarette imported or acquired in this state from a nonparticipating manufacturer.

(b) The tax levied by this section is in addition to the taxes levied by AS 43.50.010 - 43.50.190. The tax shall be administered and collected in the same manner as the taxes levied by AS 43.50.010 - 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 and this chapter apply to the tax levied in this section.

(c) In this section, "nonparticipating manufacturer" means a tobacco product manufacturer as defined in AS 45.53.100 that is not a participating manufacturer as that term is defined in sec. II(jj) of the Master Settlement Agreement.

### Article 03. EXCISE TAX ON CERTAIN TOBACCO PRODUCTS

#### Sec. 43.50.300. Excise tax levied.

An excise tax is levied on tobacco products in the state at the rate of 75 percent of the wholesale price of the tobacco products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product in the state for sale in the state; or

(3) ships or transports a tobacco product to a retailer in the state for sale by the retailer.

#### Sec. 43.50.310. Exemptions.

(a) A facility operated by one of the uniformed services of the United States is exempt from the tax. In this subsection, "uniformed services" has the meaning given in 5 U.S.C. 2101.

(b) The tax does not apply to a tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state.

#### Sec. 43.50.320. Licensing.

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product that is subject to the tax.

(b) The department, upon application and payment of a fee of \$50, shall issue a license for one year to a person who applies for a license under (a) of this section.

(c) The department may refuse to issue a license under this section if there is reasonable cause to believe the information submitted in the application is false or misleading and is not made in good faith.

(d) A license issued under this section must include the name and address of the licensee, the type of business to be conducted, and the year for which the license is issued.

(e) The department may renew a license issued under this section for a fee of \$50.

(f) The department may suspend, revoke, or refuse to renew a license issued under this section as provided in AS 43.50.070.

(g) A license required by this section is in addition to any other license required by law, except that a person who is licensed under AS 43.50.010 - 43.50.180 is exempt from the licensing requirements of this section.

(h) A license issued under this section is not assignable or transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee.

#### Sec. 43.50.330. Returns.

(a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products sold by the licensee during the preceding calendar month, the selling price of the tobacco products, and the amount of tax imposed on the tobacco products.

(b) The licensee shall remit with the return the tax due under AS 43.50.300 for the month covered by the return, after deducting four-tenths of one percent of the tax due, which the licensee shall retain to cover the expense of accounting and filing the return.

#### Sec. 43.50.335. Tax credits and refunds.

The department shall adopt procedures for a refund or credit to a licensee of the tax paid for tobacco products that have become unfit for sale, are destroyed, or are returned to the manufacturer for credit or replacement if the licensee provides proof acceptable to the department that the tobacco products have not been and will not be consumed in this state.

#### Sec. 43.50.340. Records.

A licensee shall keep a complete and accurate record of all tobacco products of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products, and the trade names and brands. Statements and records required by this section must be in the form prescribed by the department, preserved for three years, and available for inspection upon demand by the department.

#### Sec. 43.50.350. Disposition of proceeds.

The tax collected by the department shall be deposited in the general fund. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations for health care, health research, health promotion, and health education programs.

*Sec. 43.50.360. Annual report. [Repealed, Sec. 35 ch 126 SLA 1994].*

Repealed or Renumbered

#### Sec. 43.50.370. Regulations.

The department shall adopt under the Administrative Procedure Act (AS 44.62) reasonable regulations that it considers necessary to carry out the provisions of AS 43.50.300 - 43.50.390.

#### Sec. 43.50.390. Definitions.

In AS 43.50.300 - 43.50.390,

(1) "distributor" means a person who

(A) brings, or causes to be brought, a tobacco product into the state from outside the state for sale;

(B) makes, manufactures, or fabricates a tobacco product in the state for sale in the state; or

(C) ships or transports a tobacco product to a retailer in the state for sale by the retailer;

(2) "licensee" means a distributor who is

(A) licensed under [AS 43.50.320](#); or

(B) exempted by [AS 43.50.320](#) (g) from licensing under [AS 43.50.320](#);

(3) "the tax" means the tax levied by [AS 43.50.300](#);

(4) "tobacco product" means

(A) a cigar;

(B) a cheroot;

(C) a stogie;

(D) a perique;

(E) snuff and snuff flour;

(F) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(G) chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing; or

(H) an article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in [AS 43.50.170](#);

(5) "wholesale price" means

(A) the established price for which a manufacturer sells a tobacco product to a distributor after deduction of a discount or other reduction received by the distributor for quantity or cash if the manufacturer's established price is adequately supported by bona fide arm's length sales as determined by the department; or

(B) the price, as determined by the department, for which tobacco products of comparable retail price are sold to distributors in the ordinary course of trade if the manufacturer's established price does not meet the standards of (A) of this paragraph.

#### Article 04. COMPLIANCE WITH FEDERAL LAWS RELATING TO CIGARETTES

##### Sec. 43.50.400. Sale or distribution of cigarettes; prohibitions.

A person may not

(1) sell or distribute to consumers in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state cigarettes

(A) the package of which

(i) bears a statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including labels stating, "for export only," "U.S. tax-exempt," "for use outside U.S.," or similar wording; or

(ii) does not comply with all requirements of federal law regarding health warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including the warning labels required by 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act), and all federal trademark and copyright laws;

(B) imported into the United States on or after January 1, 2000, in violation of 26 U.S.C. 5754; or


(C) for which a list of the ingredients added to tobacco in the manufacture of those cigarettes has not been submitted to the Secretary of the United States Department of Health and Human Services as required under 15 U.S.C. 1335a (Federal Cigarette Labeling and Advertising Act);

(2) alter a package of cigarettes before sale or distribution to the consumer so as to remove, conceal, or obscure

(A) a statement, label, stamp, sticker, or notice described in (1)(A)(i) of this section; or

(B) any health warning, including a health warning that is specified in 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act).

##### Sec. 43.50.410. Imported cigarettes: requirements.



A person that imports into this state for sale or distribution in this state cigarettes manufactured outside of the United States shall file with the department, on or before the last day of each calendar quarter, for the cigarettes that the person imported into this state in the preceding calendar quarter, a statement signed by the person under penalty of perjury that the commissioner shall treat as confidential and that shall not be considered a public record under [AS 40.25.110](#), identifying the brand and brand styles of the cigarettes, the quantity of each brand style of cigarettes, and the person or persons to whom the cigarettes have been shipped. In this section, "calendar quarter" means each of the three-month periods ending March 31, June 30, September 30, and December 31.

Sec. 43.50.420. Enforcement.

For the purpose of enforcing [AS 43.50.400](#) - 43.50.450, the commissioner may share information with any local, state, or federal government agency.

Sec. 43.50.430. Applicability.

[AS 43.50.400](#) - 43.50.450 do not apply to cigarettes

(1) imported into the United States for personal use free of federal tax or duty, or voluntarily abandoned to the United States Secretary of the Treasury at the time of entry; or

(2) sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b); however, [AS 43.50.400](#) - 43.50.450 apply to duty-free cigarettes that are brought back into the customs territory for resale within the customs territory.

Sec. 43.50.450. Definitions.

In [AS 43.50.400](#) - 43.50.450, unless the context otherwise requires,

(1) "cigarette" has the meaning given in [AS 43.50.170](#);

(2) "manufacturer" has the meaning given in [AS 43.50.170](#).

Article 05. COMPLIANCE WITH STATUTORY REQUIREMENTS REGARDING CIGARETTE SALES

Sec. 43.50.460. Tobacco product manufacturer certifications.

(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form or in the manner prescribed by the commissioner a certification to the commissioner, no later than April 30 of each year, certifying, under penalty of perjury, that, as of the date of the certification, the tobacco

product manufacturer is either a participating manufacturer or is in full compliance with AS 45.53.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list 30 days before any addition or modification to its brand families by executing and delivering a supplemental certification to the commissioner.

(c) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families. The nonparticipating manufacturer shall update the list 30 days before any addition or modification to its brand families by executing and delivering a supplemental certification to the commissioner. A nonparticipating manufacturer's certification must

(1) separately list brand families of cigarettes and the number of units sold for each brand family that was sold in the state during the preceding calendar year;

(2) list all of its brand families that have been sold in the state at any time during the current calendar year;

(3) indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification; and

(4) identify by name and address any other manufacturer of the listed brand families in the preceding calendar year.

(d) For a nonparticipating manufacturer, the certification required by (a) of this section must additionally certify that the nonparticipating manufacturer

(1) is registered to do business in the state or has appointed a resident agent for service of process and provided notice of the appointment as required by AS 43.50.475;

(2) has

(A) established and continues to maintain a qualified escrow fund; and

(B) executed a qualified escrow agreement that has been reviewed and approved by the Department of Law and that governs the qualified escrow fund; and

(3) is in full compliance with AS 45.53 and this section, and any regulations adopted under those statutes.

(e) For a nonparticipating manufacturer, the certification must also include the

(1) name, address, telephone number, and electronic mail address of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under AS 45.53 and the regulations adopted under that chapter;

(2) account number of the qualified escrow fund and sub-account number for the State of Alaska;

(3) amount that the non-participating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and the evidence or verification considered necessary by the commissioner to confirm the information submitted under this section; and

(4) amounts of and dates of any withdrawal or transfer of money the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments in accordance with AS 45.53 and the regulations adopted under that chapter.

(f) A tobacco product manufacturer may not include a brand family in its certification unless

(1) for a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined under the Master Settlement Agreement; and

(2) for a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of AS 45.53.

(g) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of AS 45.53.

(h) A tobacco product manufacturer shall maintain all invoices and documentation of sales of cigarettes and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

Sec. 43.50.465. Directory of cigarettes approved for sale and importation.

Not later than July 30 of each year, the commissioner shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of AS 43.50.460 and all brand families that are listed in those certifications, except as follows:



(1) the commissioner may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the commissioner determines is not in compliance with [AS 43.50.460](#), unless the commissioner has determined that the violation has been cured to the satisfaction of the commissioner;

(2) neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the commissioner concludes that

(A) for a nonparticipating manufacturer, all escrow payments required under AS 45.53 for any period for any brand family, regardless of whether listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Department of Law; or

(B) all outstanding final judgments, including interest on those judgments, for violations of AS 45.53 have not been fully satisfied for the brand family and the manufacturer;

(3) the commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of [AS 43.50.460](#) - 43.50.495;

(4) every licensee shall provide to the commissioner, and update as necessary, an electronic mail address for the purpose of receiving any notifications that may be required by [AS 43.50.460](#) - 43.50.495.

Sec. 43.50.470. Prohibition against sale or importation of cigarettes not in the directory.

(a) A person may not sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(b) Under regulations adopted by the department, the department may allow a licensee a credit for the tax paid under this chapter on cigarettes that the licensee destroys or returns to the manufacturer or distributor to avoid a violation of this section if

(1) the tobacco product manufacturer and brand family of the cigarettes were included in the directory at the time the licensee came into possession of the cigarettes; and

(2) the tobacco product manufacturer or brand family was subsequently removed from the directory while the licensee was still in possession of the cigarettes.

Sec. 43.50.475. Agent for service of process.

(a) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process and an action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of [AS 43.50.460](#) - 43.50.495 and AS 45.53 may be served in any manner authorized by law. The nonparticipating manufacturer shall provide the name, address, telephone number, electronic mail address, and proof of the appointment and availability of the agent to and to the satisfaction of the commissioner and the Department of Law.

(b) The nonparticipating manufacturer shall provide notice to the commissioner and the Department of Law 30 calendar days before termination of the authority of an agent and shall additionally provide proof to the satisfaction of the Department of Law of the appointment of a new agent no less than five calendar days before the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the commissioner and the Department of Law of the termination within five calendar days and shall include proof to the satisfaction of the Department of Law of the appointment of a new agent.

(c) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as required by this section is considered to have appointed the commissioner of commerce, community, and economic development as its agent and may be proceeded against in courts of this state by service of process upon the commissioner of commerce, community, and economic development in the manner described by [AS 10.06.175](#)(b), regardless of whether the nonparticipating manufacturer is a corporation; however, the appointment of the commissioner of commerce, community, and economic development as the agent does not satisfy the condition precedent to having the nonparticipating manufacturer's brand families listed or retained in the directory.

#### Sec. 43.50.480. Reporting and disclosure of information; escrow installments.

(a) Not later than the end of the month following the month in which cigarettes were imported or sold in the state, each licensee shall submit the information the commissioner requires to facilitate compliance with [AS 43.50.460](#) - 43.50.495, including a list by brand family of the total number of cigarettes or, in the case of roll-your-own cigarettes, the equivalent stick count for which the licensee, during the previous calendar month, paid the tax due for the cigarettes. For a period of five years, the licensee shall maintain and make available to the commissioner all invoices and documentation of sales of cigarettes of all nonparticipating manufacturers and any other information relied upon in reporting to the commissioner.

(b) The commissioner is authorized to disclose to the Department of Law any information received under this chapter and requested by the Department of Law for purposes of determining compliance with and enforcing the provisions of this chapter.

The commissioner and the Department of Law shall share with each other the information received under this chapter, and may share the information with other federal, state, or local agencies only for purposes of enforcement of AS 43.50.460 - 43.50.495, AS 45.53, or corresponding laws of other states.

(c) The commissioner or Department of Law may require at any time that the nonparticipating manufacturer provide proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with AS 45.53 of the amount of money in the fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates of withdrawals.

(d) In addition to the information required to be submitted under (a) of this section, the commissioner or the Department of Law may require a licensee or tobacco product manufacturer to submit any additional information, including samples of the packaging or labeling of each brand family, necessary to enable the commissioner or the Department of Law to determine whether a tobacco product manufacturer is in compliance with AS 43.50.460 - 43.50.495.

(e) To promote compliance with the provisions of AS 43.50.460 - 43.50.495, the commissioner may adopt regulations requiring a tobacco product manufacturer subject to the requirements of AS 43.50.460 to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made. The commissioner may require production of information sufficient to determine the adequacy of the amount of the installment deposit.

#### Sec. 43.50.485. Penalties and other remedies.

(a) In addition to or in place of any other civil or criminal remedy provided by law, upon a determination that a licensee has violated AS 43.50.470 (a) or any regulation adopted under that statute, the commissioner may revoke or suspend the license issued under AS 43.50.010, 43.50.035, or 43.50.320 of any licensee. The department shall comply with the provisions of AS 44.62 (Administrative Procedure Act). Each offer to sell cigarettes in violation of AS 43.50.470 (a) constitutes a separate violation. The commissioner also may impose a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes sold or \$5,000 upon a determination of violation of a provision of AS 43.50.470 (a) or any regulations adopted under that statute. The penalty shall be imposed in the manner provided by AS 43.05.245.

(b) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state, or imported for personal consumption in this state in violation of AS 43.50.470 (a) are contraband, regardless of whether the violation was knowing, and the cigarettes are subject to seizure and forfeiture; seized and forfeited cigarettes shall be destroyed and may not be resold. The department shall comply with the provisions of AS 44.62 (Administrative Procedure Act).

(c) The Department of Law, on behalf of the commissioner, may seek an injunction to restrain a threatened or actual violation of AS 43.50.460, 43.50.470(a), or 43.50.480 by a licensee and to compel the licensee to comply with those provisions.

Sec. 43.50.490. Miscellaneous provisions.

(a) A determination of the commissioner not to list in, or to remove from, the directory a brand family or tobacco product manufacturer is subject to administrative review under [AS 44.62.330](#) - 44.62.630.

(b) A person may not be issued a license or granted a renewal of a license under [AS 43.50.010](#), 43.50.035, or 43.50.320 unless the person has certified in writing, under penalty of perjury, that the person will comply fully with [AS 43.50.460](#) - 43.50.495.

(c) The department shall adopt under AS 44.62 (Administrative Procedure Act) reasonable regulations that it considers necessary to carry out the provisions of [AS 43.50.460](#) - 43.50.495.

(d) If a court determines that a person has violated the provisions of [AS 43.50.460](#) - 43.50.495, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state for deposit in the general fund. Unless otherwise expressly provided, the remedies or penalties provided by [AS 43.50.460](#) - 43.50.495 are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Sec. 43.50.495. Definitions.

In [AS 43.50.460](#) - 43.50.495, unless the context otherwise requires,

(1) "brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including menthol, lights, kings, and 100s; "brand family" includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicium of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;

(2) "cigarette" has the meaning given in [AS 45.53.100](#);

(3) "commissioner" means the commissioner of revenue;

(4) "department" means the Department of Revenue;

(5) "directory" means the directory developed and made available under [AS 43.50.465](#);

(6) "licensee" means a person licensed or required to be licensed under AS 43.50.010, 43.50.035, or 43.50.320;

(7) "Master Settlement Agreement" has the meaning given in AS 45.53.100;

(8) "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer;

(9) "participating manufacturer" has the meaning given in Section II(jj) of the Master Settlement Agreement and all amendments to that agreement;

(10) "qualified escrow fund" has the meaning given in AS 45.53.100;

(11) "roll-your-own" has the meaning given in AS 45.53.100 (4)(B);

(12) "tobacco product manufacturer" has the meaning given in AS 45.53.100;

(13) "units sold" has the meaning given in AS 45.53.100.

## Article 06. CIGARETTE TAX STAMPS

### Sec. 43.50.500. Tax payment by use of stamps.

A licensee shall pay the tax imposed under AS 43.50.090 (a), 43.50.190(a), and 43.50.200 through the use of stamps issued under AS 43.50.500 - 43.50.700.

### Sec. 43.50.510. Stamp design; manner of affixing.

(a) The department shall design and furnish stamps of sizes and denominations as determined by the department.

(b) Notwithstanding the packaging requirements of AS 43.70.075(g)(1), a stamp required under AS 43.50.500 - 43.50.700 must be affixed

(1) on the smallest package that will be handled, sold, used, consumed, or distributed in this state; and

(2) in a denomination equal to the amount of tax due under this chapter on the cigarettes in the package.

(c) A stamp required under AS 43.50.500 - 43.50.700 shall be affixed to the bottom of each individual package of cigarettes in a manner so that the stamp cannot be removed from the package without being mutilated or destroyed.

(d) For purposes of this section, a stamp is considered affixed only if more than 80 percent of the stamp is attached to the individual package in accordance with (c) of this section and regulations adopted by the department.

Sec. 43.50.520. Stamp required before sale, distribution, or consumption.

(a) Except as provided in [AS 43.50.580](#), a licensee or the authorized agent or designee of the licensee shall affix a stamp, in the manner required by [AS 43.50.510](#), to each package of cigarettes immediately upon the opening of the shipping container containing the package and before sale, distribution, or consumption in this state.

(b) Except as provided in [AS 43.50.580](#) and 43.50.610, a person may not engage in the following activities in this state unless the package containing the cigarettes is affixed with the required stamp:

(1) sell or distribute cigarettes to a person who is a consumer in this state;

(2) acquire, hold, own, possess, or transport cigarettes for sale or distribution in this state;

(3) import or cause to be imported cigarettes into this state for sale, distribution, or consumption; or

(4) place or store cigarette packages in a vending machine in this state.

Sec. 43.50.530. Sale of stamps.

(a) The department shall furnish stamps for sale to licensees.

(b) The department may enter into agreements with financial institutions to permit the sale of stamps by those institutions. The department shall make a list of financial institutions authorized to sell stamps under this section available to the public.

(c) The department may limit the number of stamps sold to a licensee during the three months immediately preceding the effective date of a tax increase under [AS 43.50.090](#), 43.50.190, or 43.50.200 to minimize the amount of cigarette stockpiling by a licensee. The department may not set the limit of stamps that a licensee may purchase during that three-month period below an amount equal to three times the average monthly stamp purchases made by the licensee during the 12-month period immediately preceding that three-month period.

Sec. 43.50.540. Purchase of and payment for stamps.

(a) A licensee shall apply to the department or a financial institution authorized under [AS 43.50.530](#) (b) to purchase stamps required by [AS 43.50.500](#) - 43.50.700.

(b) A licensee may authorize an agent or designee to purchase stamps for the licensee at a location where stamps are sold. The licensee's authorization of an agent or designee must be in writing and must be signed by the licensee. The licensee shall provide a copy of the authorization to the department. The authorization continues in effect until the department receives the licensee's written notice of revocation of the authorization.

(c) Except as otherwise provided in this subsection, each stamp shall be sold to a licensee at its denominated value less the discount provided in this subsection. The discount under this subsection is provided as compensation for affixing stamps to packages as required by [AS 43.50.500](#) - 43.50.700. The department may reduce or eliminate the discount to a licensee under this subsection if the licensee fails to meet the requirements of [AS 43.50.500](#) - 43.50.700. The discount under this subsection is equal to the sum of the amounts calculated using the following percentages of denominated value of stamps purchased by a licensee under this section in a calendar year:

(1) \$1,000,000 or less, three percent;

(2) the amount that is more than \$1,000,000 but not more than \$2,000,000, two percent;

(3) the amount that is over \$2,000,000, zero percent.

(d) Payment for stamps shall be made at the time of purchase, except that the department may permit a licensee to defer payments as provided in [AS 43.50.550](#).

(e) The licensee or the licensee's agent or designee must obtain the stamps in person from the department or a financial institution authorized to sell stamps under [AS 43.50.530](#) (b). Alternatively, the licensee may request in writing that the stamps be shipped or transported in a manner specified by the licensee that is acceptable to the department. The department may accept only United States mail or common or private carrier as a shipping or transportation method.

(f) Title to the stamps passes immediately to the licensee at the time the stamps are obtained in person or, if the stamps are shipped or transported, at the time the stamps are placed in the United States mail or received by the common or private carrier. The licensee bears all costs associated with shipping or transporting the stamps. The department may replace stamps lost or damaged in transit if the licensee provides proof acceptable to the department verifying that the loss or damage occurred while the stamps were in the possession of the shipping company and the shipping company substantiates the loss or damage. Damaged stamps must be returned to the department before the department may replace them.

(g) Loss, destruction, or theft of stamps does not absolve the licensee of its obligation to make payment for the stamps, including payment on a deferred-payment basis under [AS 43.50.550](#).

(h) For purposes of the discount provided in (c) of this section, "stamps purchased by a licensee" includes stamps purchased by affiliated licensees.

Sec. 43.50.550. Deferred-payment basis for stamps.

(a) A licensee may apply to the department to purchase stamps on a deferred-payment basis. Upon receipt of the application and the bond required under (b) of this section, the department may set the maximum dollar amount of stamps that the licensee is authorized to purchase on a deferred-payment basis in a calendar month.

(b) A licensee who submits an application for the purchase of stamps on a deferred-payment basis shall, as a condition of approval of the application, post a bond acceptable to the department in an amount equal to

(1) 200 percent of the maximum dollar amount of allowed monthly purchases under this section; or

(2) 100 percent of the maximum dollar amount of allowed monthly purchases under this section if the licensee

(A) holds a license issued under AS 43.50.010 for a physical location in this state; and

(B) has been in full compliance with the provisions of this title and regulations adopted under this title during the preceding 60 months.

(c) Amounts owing for stamps purchased on a deferred-payment basis in a calendar month are due on or before the last day of the next calendar month. Payment shall be made by a remittance acceptable to the department that is made payable to the department.

(d) The department may designate the sales locations where the licensee may make purchases of stamps on a deferred-payment basis and fix the dollar amount of purchases that the licensee may make under this section at each designated sales location each month.

Sec. 43.50.560. Suspension of deferred-payment basis privilege.

The department may suspend, without prior notice, a licensee's privilege to purchase stamps on a deferred-payment basis or may reduce the monthly dollar amount of purchases the licensee may make under AS 43.50.550 if

(1) the licensee fails to pay for stamps when payment is due;

(2) the licensee's bond is cancelled or becomes void, impaired, or unenforceable;





(3) the department determines that the collection of an amount unpaid or due from the licensee under this chapter is jeopardized; or

(4) the licensee violates a state statute or regulation related to the collection of taxes under this chapter.

Sec. 43.50.570. Interest.

A licensee who fails to pay an amount due for the purchase of stamps within the time required

(1) is considered to have failed to pay the cigarette taxes due under this chapter; and

(2) shall pay interest at the rate established under [AS 43.05.225](#) from the date on which the amount became due until the date of payment.

Sec. 43.50.580. Possession of unstamped cigarettes.

(a) Except as provided in (b) of this section and in AS 43.50.610, a person may not possess unstamped cigarettes in this state.

(b) A licensee may possess unstamped cigarettes in this state if

(1) the licensee posts a surety bond in an amount satisfactory to the department to ensure performance of its duties under this chapter; and

(2) unstamped cigarettes are necessary for the conduct of the licensee's business in making sales or distributions to

(A) an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter; or

(B) customers outside the state and the licensee provides proof acceptable to the department that the licensee is properly licensed in the jurisdictions outside the state where the sales or distributions are made.

(c) At the time of shipping or delivering cigarettes to an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter, a licensee shall make a duplicate invoice showing complete details of the shipment or other distribution and a statement indicating whether stamps were affixed to each cigarette package in accordance with [AS 43.50.500](#) - 43.50.700. The licensee shall transmit the duplicate invoice to the department as an attachment to the monthly report required under [AS 43.50.630](#).

(d) If a licensee who is authorized to possess unstamped cigarettes under (b) of this section fails to comply with the requirements of this section, the licensee is no longer

authorized to and may not possess unstamped cigarettes under this section and is subject to the imposition of any applicable penalty under this title or other law.

(e) For purposes of (a) of this section, "person" does not include entities to whom sales or distributions are made as described in (b)(2) of this section.

Sec. 43.50.590. Refunds or credits for unused stamps and for unsalable, destroyed, or certain returned cigarette packages.

(a) The department shall adopt procedures for a refund or credit to a licensee in the amount of the denominated value, less the discount given under AS 43.50.540, for

(1) unused or damaged stamps;

(2) stamps affixed to cigarette packages that have become unfit for use or sale, are destroyed, or are returned to the manufacturer for credit or replacement if the licensee provides proof acceptable to the department that the cigarettes have not been and will not be consumed in this state; or

(3) stamps affixed to cigarette packages that are sold or distributed outside the state if the licensee provides proof acceptable to the department that the cigarettes have not been and will not be consumed in this state and the licensee is properly licensed in the jurisdictions outside the state where the sales or distributions are made.

(b) A refund or credit under (a) of this section may not be allowed for stamps affixed to cigarette packages in violation of this chapter or AS 45.53.

Sec. 43.50.600. Stamps prohibited on cigarette packages not complying with federal and state laws.

A licensee or the licensee's authorized agent or designee may not affix a stamp to a cigarette package if the cigarettes

(1) may not be acquired, held, owned, imported, possessed, sold, or distributed in this state under AS 43.50.400; or

(2) are not in compliance with other state or federal laws.

Sec. 43.50.610. Unstamped cigarettes as contraband; seizure.

Unstamped cigarettes found in this state are contraband and may be seized by the commissioner or an agent or employee of the commissioner or by any peace officer of the state, unless

(1) the cigarettes are

(A) in the possession of a licensee or are in transit from outside the state and are consigned to a licensee; and

(B) in the original and unopened shipping container; or

(2) possession of the unstamped cigarettes is not a violation of this chapter.

Sec. 43.50.620. Forfeiture and destruction of seized cigarettes.

Cigarettes seized under [AS 43.50.500](#) - 43.50.700 are forfeited to the state. After notice and an opportunity for a hearing, the commissioner shall destroy the cigarettes forfeited under this section.

Sec. 43.50.625. Forfeiture of other property.

(a) Upon a showing of probable cause that a person has committed the crime of misconduct involving unstamped cigarettes or stamps in the first degree under [AS 43.50.640](#), the following are subject to forfeiture:

(1) material and equipment used in the manufacture, sale, offering for sale, or possession for sale of cigarettes in this state in violation of [AS 43.50.500](#) - 43.50.640 or 43.50.660 - 43.50.700;

(2) aircraft, vehicles, or vessels used to transport or facilitate the transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale in this state in violation of [AS 43.50.500](#) - 43.50.640 or 43.50.660 - 43.50.700;

(3) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited under [AS 43.50.500](#) - 43.50.640 or 43.50.660 - 43.50.700.

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; property seized under this paragraph may be held for not more than 48 hours unless an order of forfeiture is issued by the court before the end of that time period.

(c) Within 30 days after a seizure under this section, the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest, or an assignee of a person holding an interest, in the property seized, including a right to possession, or a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in the seized property of the impending forfeiture, and, before forfeiture, the Department of Public Safety shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if a newspaper is not published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person for a violation of [AS 43.50.640](#); or

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the owner shows that the owner

(1) was not a party to the violation;

(2) did not have actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) did not have actual knowledge or reasonable cause to believe that the person committing the violation had, within the last 10 years,

(A) a criminal record for violating this chapter; or

(B) committed other violations of this chapter.

(f) The court may allow the owner of property that is subject to forfeiture under (a) of this section to redeem the property by paying an amount determined by the court to be the fair market value of the property.

(g) A person other than the owner holding, or the assignee of, a lien, mortgage, or conditional sales contract on, or the right to possession of, property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

(1) was not a party to the violation subjecting the property to forfeiture;

(2) did not have actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) did not have actual knowledge or reasonable cause to believe that the person committing the violation had, within the last 10 years,

(A) a criminal record for violating this chapter; or

(B) committed other violations of this chapter.

(h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 43.50.640.

(i) Property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public and may order any property forfeited under this section that was seized in a municipality to be transferred to the municipality in which the property was seized or to another municipality affected by the crime for which the property was forfeited. The state shall notify all municipalities affected by the crime of the forfeiture proceeding. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs. The remainder of the proceeds shall be deposited in the general fund.

(j) The title to a vehicle or vessel forfeited to the state under this section may be transferred by the state to a municipality or the local governing body of a village for official use by the municipality or village, on condition that the vehicle or vessel not be available for use by the defendant.

Sec. 43.50.630. Monthly reports; records retention; inspection of records.

(a) On or before the last day of each calendar month, a licensee shall file the following information for each place of business with the department, on a form or in a format prescribed by the department:

(1) the quantity and brands of cigarettes manufactured, imported, acquired, or sold in the state during the preceding calendar month;

(2) the number and dollar amount of stamps

(A) purchased during the preceding calendar month;

(B) affixed to cigarette packages during the preceding calendar month;

(C) not affixed to cigarette packages and on hand at the end of the preceding calendar month; and

(D) refunded or credited to a licensee under [AS 43.50.590](#); and

(3) any other information that the department requires to carry out its duties under this chapter.

(b) If a licensee ceases to manufacture, import, acquire, or sell cigarettes in this state, the licensee shall immediately file the form required under (a) of this section with the department, for the period ending with the cessation.

(c) All statements and other records required by [AS 43.50.500](#) - 43.50.700 must be

(1) in a form or format prescribed by the department;

(2) preserved by a licensee for a period of three years; and

(3) available for inspection at any time upon oral or written demand by the department or its authorized agent.

(d) A summary of information filed under (a) of this section shall be prepared by the department and released to the public upon request.

Sec. 43.50.640. Misconduct involving unstamped cigarettes or stamps in the first degree.

(a) A person commits the crime of misconduct involving unstamped cigarettes or stamps in the first degree if the person

(1) with reckless disregard that the cigarettes are unstamped

(A) sells or distributes 5,000 or more unstamped cigarettes in a single transaction;

(B) owns or possesses 5,000 or more unstamped cigarettes with the intent to sell; or

(C) acquires, holds, transports, imports, or possesses 10,000 or more unstamped cigarettes; or

(2) with reckless disregard that the stamp was previously affixed to another cigarette package

(A) affixes a previously used stamp to a cigarette package; or

(B) possesses, sells, or distributes a previously used stamp.

(b) Misconduct involving unstamped cigarettes or stamps in the first degree is a class C felony.

Sec. 43.50.650. Misconduct involving unstamped cigarettes or stamps in the second degree.

(a) A person commits the crime of misconduct involving unstamped cigarettes or stamps in the second degree if the person

(1) with reckless disregard that the cigarettes are unstamped

(A) sells or distributes at least one but fewer than 5,000 unstamped cigarettes in a single transaction;

(B) owns or possesses at least one but fewer than 5,000 unstamped cigarettes, with intent to sell;

(C) acquires, holds, transports, imports, or possesses at least 601 but fewer than 10,000 unstamped cigarettes; or

(D) acquires, holds, transports, imports, or possesses at least one but fewer than 601 unstamped cigarettes that are not for personal consumption; or

(2) is not licensed under this chapter or otherwise authorized by the department to possess stamps and possesses a stamp that is not affixed to a cigarette package.

(b) Misconduct involving unstamped cigarettes or stamps in the second degree is a class A misdemeanor.

Sec. 43.50.660. Construction of criminal statutes.

(a) The provisions of AS 11.16, [AS 11.81.600](#), 11.81.610, and 11.81.900 apply to [AS 43.50.640](#) and 43.50.650.

(b) For purposes of [AS 43.50.640](#) and 43.50.650, display of cigarettes by a person, or possession other than in the original and unopened shipping container of cigarettes by a person who holds a business license endorsement under [AS 43.70.075](#), is prima facie evidence of possession with intent to sell cigarettes. In this subsection, "display" means to openly exhibit.

Sec. 43.50.670. Unauthorized transfer of unaffixed stamps.

(a) A licensee may not sell, exchange, or otherwise transfer stamps not affixed to a package of cigarettes in accordance with this chapter to another person without the prior written approval of the department.

(b) After notice and opportunity for a hearing, the department may assess a civil fine of not less than \$1,000 nor more than \$10,000 for a violation of (a) of this section. The fine assessed is in addition to any other penalty available under the law.

Sec. 43.50.700. Definitions.

In [AS 43.50.500](#) - 43.50.700, unless the context otherwise requires,

(1) "affiliated licensees" means two or more licensees in which the same person holds, directly or indirectly, at least a 50 percent ownership interest;

(2) "carton" means a box or container originating from the manufacturer that contains packages of that manufacturer's cigarettes;

(3) "cigarette" has the meaning given in [AS 43.50.170](#);

(4) "licensee" means a person licensed by the department under AS 43.50.010 or 43.50.035 to sell, distribute, purchase, possess, or acquire cigarettes;

(5) "package" means the individual packet, box, or other container, originating from the manufacturer, in which retail sales of cigarettes are normally made or intended to be made; "package" does not include containers that are cartons, cases, bales, or boxes that contain packages of cigarettes;

(6) "person" has the meaning given in [AS 43.50.170](#);

(7) "shipping container" means the case, box, parcel, or other container in which cartons or packages of cigarettes are placed for shipment or transportation from one place to another; "shipping container" does not include a package in which retail sales of cigarettes are normally made or intended to be made;

(8) "stamp" means a stamp or other indicium that is

(A) printed, manufactured, or made under authorization of the department under this chapter;

(B) issued, sold, or circulated by the department; and

(C) used to pay the cigarette taxes levied under this chapter;

(9) "unstamped cigarettes" means a package containing cigarettes that is not affixed with the stamp required by [AS 43.50.500](#) - 43.50.700 or is affixed with a stamp in a denomination less than the tax levied under this chapter.

Article 07. UNFAIR CIGARETTE SALES



Sec. 43.50.710. Sale at less than cost; rebate in price.

(a) A wholesaler or retailer may not, with intent to injure competitors or destroy or substantially lessen competition,

(1) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than actual cost to the wholesaler or retailer; or

(2) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind or nature in connection with the sale of cigarettes.

(b) A retailer may not induce or attempt to induce or procure or attempt to procure

(1) the purchase of cigarettes at a price less than the actual cost to a wholesaler;

(2) a rebate or concession of any kind or nature in connection with the purchase of cigarettes.

(c) Evidence of advertisement, offering to sell, or sale of cigarettes by a wholesaler or retailer at less than actual cost, or evidence of an offer of a rebate in the price, the giving of a rebate in price, offer of a concession, or the giving of a concession of any kind or nature in connection with the sale of cigarettes, or the inducing, attempt to induce, the procuring, or the attempt to procure the purchase of cigarettes at a price less than actual cost to a wholesaler or retailer is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(d) Nothing in this section prohibits a manufacturer from offering promotions to a wholesaler or a retailer if the wholesale promotion is the same for all participating wholesalers and the retail promotion is the same for all participating retailers.

(e) A wholesaler or retailer who violates the provisions of this section is guilty of a class B misdemeanor.

Sec. 43.50.720. Sale at less than cost; with gift or concession.

In all advertisements, offers for sale, or sales involving two or more items when at least one of the items is cigarettes at a combined price, and in all advertisements, offers for sale, or sales involving the giving of any gift, concession, or coupon of any kind in conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling price may not be below the actual cost to the wholesaler or the actual cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in the transactions, except that, if any articles, products, commodities, gifts, or concessions are not cigarettes, the actual cost shall be determined as provided under AS 43.50.800.

Sec. 43.50.730. Sale to another wholesaler.

When one wholesaler sells cigarettes to another wholesaler, the seller is not required to include the actual cost of the selling wholesaler. Upon resale to a retailer, the purchasing wholesaler is required to include the actual cost of the purchasing wholesaler or the actual cost of the selling wholesaler, whichever is greater, in the selling price.

Sec. 43.50.740. Sales at price to meet competition.

(a) A wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to a competing wholesaler. A retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to a competing retailer.

(b) *[Repealed, Sec. 43 ch 1 FSSLA 2004].*

(c) A manufacturer whose product is sold in the state directly or through an intermediary shall provide the department with a current price list for all brands of cigarettes of the manufacturer and shall notify the department at least 10 days before a price increase takes effect.

Sec. 43.50.750. Contracts in violation of law are illegal.

A contract, express or implied, made by a person in violation of the provisions of AS 43.50.710 - 43.50.849 is illegal and void.

Sec. 43.50.760. Determination of cost.

(a) In determining actual cost to the wholesaler or retailer, a court shall consider as establishing the cost evidence tending to show that a wholesaler or retailer complained against under a provision of AS 43.50.710 - 43.50.849 purchased the cigarettes involved in the complaint at a fictitious price, or upon terms, in a manner, or under invoices, in a manner that conceals the true cost, discounts, or terms of purchase. The court shall also consider evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the state.

(b) The presumptive actual cost of cigarettes as determined by the department under AS 43.50.800 is considered competent evidence in a court action or proceeding as tending to prove actual cost to the wholesaler or retailer complained against. A party against whom the presumptive actual cost as determined by the department is introduced in evidence has the right to offer evidence tending to prove any inaccuracy of the presumptive actual cost or any statement of facts that would impair its probative value.

Sec. 43.50.770. Determination of cost of cigarettes purchased outside of ordinary channels of trade.

In establishing the actual cost of cigarettes to a wholesaler or retailer, the invoice cost of cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary channels of trade may not be used.

Sec. 43.50.780. Injunction.

(a) The department or a person injured by a violation or who would suffer from any threatened violation of [AS 43.50.710](#) - 43.50.849 may maintain an action to prevent, restrain, or enjoin the violation or threatened violation. If, in the action, a violation or threatened violation of [AS 43.50.710](#) - 43.50.849 is established, the court may enjoin and restrain or otherwise prohibit the violation or threatened violation, and the court shall assess the costs of reasonable attorney fees against the defendant. In the action, it is not necessary that actual damages to the plaintiff be alleged or proved, but, if actual damages are alleged and proved, the plaintiff, in addition to injunctive relief and costs, including reasonable attorney fees, may recover actual damages.

(b) If injunctive relief is not requested or required, a person injured by a violation of [AS 43.50.710](#) - 43.50.849 may maintain an action for damages in the appropriate court.

Sec. 43.50.790. Administration of [AS 43.50.710](#) - 43.50.849.

(a) The department

(1) shall administer [AS 43.50.710](#) - 43.50.849;

(2) may adopt regulations relating to the administration and enforcement of [AS 43.50.710](#) - 43.50.849;

(3) may determine the actual cost of cigarettes to a wholesaler or retailer as provided in [AS 43.50.800](#);

(4) may, after reasonable notice and hearing, revoke or suspend a license issued under [AS 43.50.010](#) or 43.50.035 to a person who refuses or neglects to comply with a provision of [AS 43.50.710](#) - 43.50.849.

(b) The Department of Commerce, Community, and Economic Development may, after reasonable notice and hearing, revoke or suspend a license issued under [AS 43.70.075](#) to a person who refuses or neglects to comply with a provision of [AS 43.50.710](#) - 43.50.849.

Sec. 43.50.800. Presumptions applicable to determination of cost.

(a) The presumptive actual cost of cigarettes to a wholesaler is, for purposes of [AS 43.50.710](#) - 43.50.849, the presumptive wholesale cost as calculated by the department plus an amount equal to four and one-half percent of the presumptive wholesale cost to account for business costs. For purposes of this section, the presumptive wholesale cost is

the manufacturer's list price, less trade discounts, plus the full face value of all cigarette taxes.

(b) The presumptive actual cost of cigarettes to a retailer is, for purposes of [AS 43.50.710](#) - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler as calculated by the department under (a) of this section, plus an amount equal to six percent of the presumptive actual cost of cigarettes to the wholesaler to account for business costs.

(c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell cigarettes at less than the presumptive actual cost to the wholesaler or retailer as calculated under (a) or (b) of this section must first obtain approval from the department. The department may grant approval only if the wholesaler or retailer provides proof satisfactory to the department that the wholesaler's or retailer's actual cost is lower than presumed. Approval for cigarette sales at less than the presumptive actual cost as determined under (a) or (b) of this section may not be granted for a period longer than one year. In reviewing proof of actual wholesale or retail cost, the department may consider the costs reflected on the actual invoice, but may not consider cash discounts. In reviewing proof of actual costs, the department may consider the standards and methods of accounting regularly employed, and must include labor costs, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, advertising, preopening expenses, provision for impaired assets and closing costs, interest expenses, and provision for merger and restructuring expenses. The department shall adopt regulations to determine the actual costs for the wholesaler and retailer for the purposes of [AS 43.50.710](#) - 43.50.849.

Sec. 43.50.845. Short title for [AS 43.50.710](#) - 43.50.849.

[AS 43.50.710](#) - 43.50.849 may be known as the Unfair Cigarette Sales Tax Act.

Sec. 43.50.849. Definitions.

In [AS 43.50.710](#) - 43.50.849,

- (1) *[Repealed, Sec. 43 ch 1 FSSLA 2004].*
- (2) "cigarette" has the meaning given in [AS 43.50.170](#);
- (3) "department" means the Department of Revenue;
- (4) "direct-buying retailer" has the meaning given in [AS 43.50.170](#);
- (5) "person" has the meaning given in [AS 43.50.170](#);
- (6) *[Repealed, Sec. 43 ch 1 FSSLA 2004].*

(7) *[Repealed, Sec. 43 ch 1 FSSLA 2004].*

(8) "retailer" has the meaning given in [AS 43.50.170](#) and includes a person licensed or required to be licensed as a direct-buying retailer under this chapter and a person who holds or is required to hold a license endorsement under [AS 43.70.075](#);

(9) "sale" has the meaning given in [AS 43.50.170](#);

(10) "sell at retail," "sale at retail," or "retail sales" means a sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business;

(11) "sell at wholesale," "sale at wholesale," or "wholesale sales" means a sale made in the ordinary course of trade or usual conduct by a wholesaler to a retailer for the purpose of resale;

(12) "trade discount" means a price reduction that is offered by a cigarette manufacturer on the date of sale, is reflected on the invoice as a deduction from the manufacturer's list price, and is fully earned and determinable on the date of sale;

(13) "wholesaler" means a person licensed or required to be licensed under [AS 43.50.010](#) or [AS 43.50.035](#) and who sells cigarettes to a retailer for the purpose of resale.C